

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

DRUMMOND COAL SALES, INC.,

Plaintiff,

vs.

SEQUOIA ENERGY, LLC,

Defendant.

CIVIL ACTION NO. _____

COMPLAINT

COMES NOW the Plaintiff, Drummond Coal Sales, Inc. (hereinafter "Drummond Coal Sales"), in the above-styled cause, by and through the undersigned counsel, and hereby files this Complaint against the Defendant.

PREAMBLE

1. Plaintiff, Drummond Coal Sales, Inc., is an Alabama corporation with its principal place of business in Birmingham, Alabama.

2. Defendant, Sequoia Energy, LLC (hereinafter "Sequoia") is, upon information and belief, a Kentucky Limited Liability Company with its principal place of business in Middlesboro, Bell County, Kentucky.

FACTS

3. On or about December 28, 2007, Drummond Coal Sales confirmed a contract with Sequoia for the purchase of 240,000 net tons of coal. The base price, pursuant to the coal confirmation letter, was to be "\$56.26 per net ton FOB rail car/CSX

Hanlan District.” The terms were accepted by both parties as part of the subject contract. (A copy of the coal confirmation letter dated December 28, 2007, is attached hereto as Exhibit A).

4. The schedule of the delivery of the subject coal was set forth in the subject contract and stated as follows:

Two trains per month January-December, 2008. Schedule subject to changes based upon mutual agreement of parties. All coal to be loaded into trains no later than December 10, 2008, subject to the timely delivery of rail cars by CSX to meet the December 10, 2008 completion date.

5. In February/March, 2008, Sequoia only made one train shipment in each month. Sequoia did not ship any shipments in May, 2008, only shipped one train load in June, 2008, and to date, has not shipped any train loads in July, 2008.

6. Demands have been made upon Sequoia to fulfill its contractual obligations pursuant to the contract dated December 28, 2007. However, Sequoia has failed and/or refused to comply with the terms of the subject contract.

COUNT I
(Breach of Contract)

7. Drummond Coal Sales readopts, realleges and reavers paragraphs 1 through 6 as if fully set forth herein.

8. Defendant has, without justification or excuse, failed to comply with the contractual agreement dated December 28, 2007 (Exhibit A).

9. The Defendant’s failure to abide by the terms of the subject contract constitutes a material breach of the subject contract.

Wherefore, Drummond Coal Sales demands judgment against Defendant for said breach of contract, including all interest, costs, attorney fees and expenses, as allowed by law.

COUNT II
(Specific Performance)

10. Plaintiff readopts, realleges and reavers paragraphs 1 through 9 as if fully set forth herein.

11. In light of the Defendant's duties and obligations pursuant to the contract dated December 28, 2007, Drummond Coal Sales, requests and moves this Court for the entry of an Order, requiring the Defendant to fully perform each and every obligation under the contract and deliver said coal pursuant to the contract terms. Drummond Coal Sales also requests further and different relief as may be appropriate.

Wherefore, Drummond Coal Sales demands judgment against Defendant including all interest, costs, attorney fees and expenses, as allowed by law.

COUNT III
(Unjust Enrichment)

12. Plaintiff readopts, realleges and reavers paragraphs 1 through 11 as if fully set forth herein.

13. Drummond Coal Sales and the Defendant agreed to be bound by the terms and conditions of the December 28, 2007 contract (Exhibit A).

14. The terms and conditions of the December 28, 2007 contract have not been met by the Defendant.

15. Should Defendant receive the benefit of selling the subject coal to a third party, it will be in direct violation of the terms and conditions of the December 28, 2007 contract and, therefore will have been unjustly enriched if allowed to go forward with the sale of coal to any third party.

Wherefore, Drummond Coal Sales demands judgment against Defendant for said unjust enrichment, including all interest, costs, attorney fees and expenses, as allowed by law.

COUNT IV
(Fraud)

16. Plaintiff readopts, realleges and reavers paragraphs 1 through 15 as if fully set forth herein.

17. Prior to entering into the subject contract, the Defendant fraudulently represented to Drummond Coal Sales that it would fully meet its obligations pursuant to the contract. Drummond Coal Sales relied on the representations of the Defendant and entered into the December 28, 2007 contract.

18. The Defendant intentionally and fraudulently induced Drummond Coal Sales to enter into the subject contract with the knowledge that it would not abide by the terms of the contract.

19. Drummond Coal Sales has demanded that the Defendant abide by the terms of the contract and Defendant has ignored and/or refused to abide by those terms.

20. As a proximate consequence thereof, Drummond Coal Sales has been caused to suffer damages and has also incurred legal expenses and other costs.

Wherefore, Drummond Coal Sales demands judgment against Defendant for said fraud, including all interest, costs, attorney fees and expenses, as allowed by law.

COUNT IV
(Declaratory Judgment)

21. Plaintiff readopts, realleges and reavers paragraphs 1 through 20 as if fully set forth herein.

22. Drummond Coal Sales entered into a contract with the Defendant whereby Defendant agreed to deliver to Drummond Coal Sales a certain quantity and quality of coal over a certain period of time (Exhibit A). Defendant agreed to the terms and conditions of the subject contract.

23. Defendant also agreed to the additional terms and conditions attached to the subject contract (Exhibit A).

24. The Defendant has refused to abide by the terms of the subject contract and additional terms and conditions.

25. Drummond Coal Sales requests that this Court find and declare that the Defendant is contractually bound to Drummond Coal Sales pursuant to the terms and conditions contained within the contract (Exhibit A).

26. Drummond Coal Sales further requests that this Court find and declare that the Defendant is contractually bound to deliver to Drummond Coal Sales the subject coal or to be bound by damages as set forth in the subject contract.

Wherefore, Drummond Coal Sales demands judgment declaring that Defendant has no reason not to deliver the subject coal pursuant to the contract terms.

A handwritten signature in cursive script, reading "William Anthony Davis, III". The signature is written in dark ink and is positioned above the printed names of the attorneys.

WILLIAM ANTHONY DAVIS, III (DAV022)

PHILIP G. PIGGOTT (PIG002)

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Serve Defendant via Certified Mail at:

Sequoia Energy, LLC

c/o Harlan Development, Corp., Registered Agent

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